IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.2188 OF 2004

IN

SUIT NO.1664 OF 2004

...

Bank of Maharashtra ...Plaintiff

v/s.

Sezal Shantilal Shah

and ors. ...Defendants

...

Mr.T.N. Tripathi for the Plaintiff.

Mr.N.S. Jain i/b S.K. Jain for Defendants Nos. 1 to 4 to 6.

Ms.Lata Chheda for Defendant No.5.

...

CORAM: D.K.DESHMUKH, J.

DATED: 16TH JUNE,2005

P.C.:

1. This Notice of motion is taken out by the Plaintiff/bank for temporary injunction against the Defendant No.7 restraining him from withdrawing the amount of Rs.1,19,195/- from Madavpura Mercentile Co.operative Bank. The prayer is made on the basis of letter dated 29-1-2003 addressed by Defendant No.7 to the Madavpura Mercantile Co.operative Bank. Paragraph 2 of that letter is relevant, which reads as under:-

> "We request and authorise you to mark a lien on the above deposit in favour of Bank of Maharashtra Thakurdwar branch and to pay the proceeds on maturity along with half yearly interest directly to them for credit of Savings Bank a/cs bearing numbers 24154, 15711, 25902 and 15838 with them."

2. There were two submissions made on behalf of the Defendant No.7 in relation to this letter. (i) that

this was issued because of pressure exercised by the Plaintiff/bank and (ii) there is no privity of contract in relation to suit claim between the Plaintiff and the Defendant No.7.

3. So far as first submission is concerned, obviously it has no substance. Because no particulars of the pressure and undue influence have been given.

4. So far as second aspect is concerned, the Defendant No.7 has created a charge in relation to amount lying in the accounts by this letter. He cannot rescile from his letter. In my opinion, therefore, interest of justice would be sub-served by granting interim order in terms of prayer clause (b) excluding the portion bracketed in blue. As a result, the interim order is granted in following terms:

> "That pending the hearing and final disposal of the suit the Defendants, their servants, agents of any person claiming through them be restrained from in any manner dealing with, disposing of, demanding, encashing or realizing or receiving the said Term Deposit Receipt No.270602 for Rs.1,19,195/- dated 20th March, 2002 with Madhavpura Mercantile Co-operative Mandvi Branch together with

interest accrued thereon."

5. Defendant No.7 is also restrained from withdrawing the amount of interest that may have been deposited in Account No.2428 with the Plaintiff/bank as per letter dated 29-1-2003 quoted above.

Motion disposed of.

...